

Appl. No. 09/824,454
Atty. Docket No. 8047
Amdt. Dated Oct. 4, 2004
Reply to Office Action of July 2, 2004
Customer No. 27752

REMARKS

Claims 1-5 and 8 are pending in the present application and stand rejected. Claims 1-5 and 8 have been rejected.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,505,719 to Cohen et al. (hereafter "Cohen"). In support of this rejection, the Office states that Cohen teaches a first layer comprising synthetic bicomponent fibers and natural fibers. The Office states that Cohen teaches that the synthetic fibers are contained in an amount of 10-100 wt% and the natural fibers are contained in an amount of 0-90 wt%. The Office asserts that either the second or third layer taught by Cohen corresponds with Applicant's claimed inner layer. The Office states that Cohen discloses the second and third layers as comprising 10-100 wt% synthetic fibers and 0-90 wt% natural fibers. The Office states that the fourth layer as described in Cohen corresponds to Applicant's claimed outer layer. The Office states that Cohen's fourth layer comprises 10-100 wt% synthetic fibers and 0-90 wt% natural fibers. The Office further provides that Cohen teaches the card-and-bind method for making the nonwoven layers and embossing of the web along the edges or across the web. The Office asserts that Cohen does not specifically measure the percent of the total basis weight per layer. However, the Office concludes that given the optimizable thicknesses of each layer and the density values cited in Cohen it follows that the claimed ranges are anticipated by Cohen. Applicant traverses this rejection.

Applicant does not dispute the Office's presentation of Cohen. However, Applicant does contest assumptions made by the Office and the sufficiency of the anticipation rejection. Case law clearly states that, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); *See also* MPEP § 2131.

With regard to Claim 1, Cohen does not teach or suggest each and every element recited by Applicant. Claim 1 states, in part, "said inner layer bonded at discrete bond sites to said first outer layer in a face to face relationship . . . said second fibrous outer layer bonded at discrete bond sites to said inner layer in a face to face relationship." The Office asserts that Cohen teaches these elements. Cohen teaches a four layer absorbent structure with the possibility of subsequent layers. *See* Col. 8, lines 28-39. The Office states that Cohen teaches a first layer that corresponds to Applicant's first fibrous outer layer, a second or third layer that corresponds to Applicant's fibrous inner layer, and a fourth layer that corresponds Applicant's claimed outer layer. Cohen does not teach Applicant's

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inner layer that is bound in face to face relationship to the first outer layer and the second outer layer. If the second layer of Cohen is considered to correspond to Applicant's inner layer, the second layer is not bound in a face to face relationship to the fourth layer, which the Office states corresponds to Applicant's second outer layer. If the third layer of Cohen is considered to correspond to Applicant's inner layer, the third layer is not bound in a face to face relationship to the first layer, which the Office states corresponds to Applicant's first outer layer. Regardless of how the structure of Cohen is viewed by the Office, Cohen fails to teach "said inner layer bonded at discrete bond sites to said first outer layer in a face to face relationship . . . said second fibrous outer layer bonded at discrete bond sites to said inner layer in a face to face relationship." As a result, Cohen fails to anticipate Claim 1.

Claim 2 is dependent from and contains all the limitations of Claim 1. Since Cohen fails to teach each and every limitation of Claim 1, Cohen likewise fails to teach each and every limitation of Claim 2.

With regard to Claims 3-5, the Office states that Cohen does not specifically measure the percent of total basis weight per layer. Case law states, "Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim." *Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997). Claims 3-5 recite layers having specific weight percentages compared to the total basis weight of the web. Since, as the Office states, Cohen "does not specifically measure the percent of total basis weight per layer," Cohen cannot be relied upon to teach or suggest Applicant's limitations as recited in Claim 3-5. Furthermore, Cohen cannot be relied upon to inherently teach the relative basis weights as claimed by Applicant. Inherency requires that "the missing descriptive matter is necessarily present in the thing described in the reference." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). There has been no showing that Cohen necessarily possesses the relative basis weights as claimed by Applicant.

REJECTION UNDER 35 U.S.C. § 103

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen in further view of U.S. Pat. No. 6,333,093 to Burrell et al. (hereafter "Burrell"). In support of this rejection, the Office states:

While the Cohen reference does not disclose bonding of the layers without adhesive, the Burrell reference teaches the advantages of ultrasonic bonding, without the use of adhesive. The Burrell reference teaches multilayered, nonwoven, absorbent structures wherein the plurality of layers are bonded at discrete locations using ultrasonic welds. Ultrasonic welding is preferred over adhesive to retain the absorbent and moisture penetration properties, while retaining the conforming properties of the absorbent structure. Therefore, it would have been obvious to one

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of ordinary skill in the art to modify the Cohen reference in view of the Burrell reference to use ultrasonic welding in place of an adhesive in order to retain absorbent and moisture penetration properties, while retaining the conforming properties of the absorbent structure.

Applicant traverses this rejection.

Claim 8 is dependent from and contains all the limitations of Claim 1. In light of the arguments presented above relative to the § 102 rejection, Claim 1 is neither anticipated by or unpatentably obvious over Cohen. Since Claim 1 is nonobvious, Claim 8 is likewise nonobvious. *See In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) ("Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.").

CONCLUSION

All rejections in the Office Action have been addressed. Based on the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the rejections. Allowance of each of the pending claims in the next Office Action is requested.

Respectfully Submitted,

THE PROCTER & GAMBLE COMPANY

By


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